IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPEALLATE JURISDICTION

APPEAL FROM ORDER NO.536 OF 1999

Shri Noormohamed Maqbul Mujawar & Anr. ... Appellants.

V/s.

Sou. Bismilla Nalso Mujawar & Ors. ... Respondents.

Shri S.D. Dharmadhikari, Advocate for the Appellants.

Shri R.V. More, Advocate for Respondent Nos.1 & 2.

CORAM: A.S.OKA,J.

DATE : 4TH APRIL 2005.

ORAL JUDGMENT :-

1. On 28th March 2005, the submissions of the Advocates appearing for the rival parties were heard and today the Appeal is kept for dictation of Judgment.

2. By This Appeal from Order, Appellants have impugned the Judgment and Order dated 12th April 1999 by which

Appellants were held guilty of having committed breach of order dated 27th November 1997 passed by the learned Joint District Judge, Sangli. The Appellants were ordered to be detained in Civil Prison for a period of two months subject to concerned Respondents depositing subsistance allowance in the Trial Court.

3. With a view to appreciate the rival submissions, it will be necessary to refer to relevant facts of the case. The Appellants herein were the Appellants in Misc. Civil Appeal Nos.102 and 103 of 1997 filed before the learned Joint District Judge, Sangli. On 27th November 1997, the Appeals were allowed. On the same day, an application was made by the Respondents in the Appeals (Original Plaintiffs) praying for stay of operation of the Judgment and Order passed in both the Appeals. After hearing the Advocates for both the parties, the learned Joint District Judge stayed the effect and operation of Judgment and Order dated 27th November 1997. The learned Judge directed both the parties to maintain status quo and not to change a factual situation as it existed on the date of preferring the Appeals for a period of 15 days. On 10th December 1997, the allegation is that the Appellants

alongwith 8 others started demolishing the house of the Respondent Nos.1 and 2 which is the suit property though the order of status quo passed on 27th November 1997 was brought to the notice of the Appellants. The Appellants with the help of their associates and Police Constables demolished the said house. Therefore, an application was made being Misc. Civil Application No.33 of 1999 by the Respondent Nos.1 and 2 on 11th December 1997, inter-alia praying for directing that the Appellants, their Associates and concerned Police Constable be detained in Civil Prison as they committed willful breach of the order dated 27th November 1997.

4. By order dated 4th March 1998, the Joint District Judge held that the application made by Respondent Nos.1 and 2 was maintainable and thereafter, the said application was registered as Misc. Civil Application.

5. A reply was filed by the Appellants in which they denied to have disobeyed the order of granting status-quo. The Appellants denied to have demolished the suit structure. One more contention was raised that they had no knowledge about the order dated 27th November 1997.

6. The learned Joint District Judge, after considering the evidence on record came to the conclusion that there was willful breach of the order dated 27th November 1997 on the part of the Appellants and therefore, the impugned order was passed.

7. The learned Counsel appearing for the Appellants submitted that the order dated 27th November 1997 can not be treated as an order under order 39 Rule 1 or 2 of the Code of Civil Procedure 1908 (hereinafter referred to as "the said Code") and therefore, Rule 2(A) of Order 39 of the said Code was not applicable and the application made by Respondent Nos.1 and 2 was not maintainable. He submitted that the evidence on record is not properly appreciated by the Joint District Judge. He submitted that there was no wilful disobedience of the order on the part of the Appellants. He lastly submitted that order dated 27th November 1997 was passed after disposal of the Appeals preferred by the Appellants on merits and therefore, the Court ought not to have take action under Section 39 Rule 2(A).

8. Shri R.V. More, Advocate appearing for the

Respondent Nos.1 and 2 has supported impugned Judgment and Order and has taken me through the relevant findings.

9. I have considered the rival submissions. The Respondent No.1 herein is the Plaintiff in Regular Civil Suit No.13 of 1997 filed against the Appellants. The Respondent No.2 is the Plaintiff in Regular Civil Suit No.14 of 1997 filed against the Appellants and others. The subject matter of Regular Civil Suit No.13 of 1997 filed by the Respondent No.1 is land bearing Gat No.1843 together with a farm house situated thereon. The subject matter of Regular Civil Suit No.14 of 1997 is also land bearing Gat No.1843. In both the Suits Application for temporary injunction were filed by Respondent Nos.1 and 2. The learned Trial Judge granted temporary injunction restraining the Original Defendants for interfering the peaceful possession of the Respondent Nos.1 and 2 over the Suit properties. Misc.Civil Appeal Nos.102 of 1997 and 103 of 1997 were preferred by the Appellants for challenging the orders passed on Application for temporary injunction by the Trial Court. As stated earlier, both the Appeals were allowed by the Judgment and Order dated 27th November

1997. On the same day, on an application made by the Respondent Nos.1 and 2, following order was passed :-

> "1. Heard Learned Counsel for the Appellants and learned Counsel appearing for the original Plaintiffs. Interim order of temporary injunction granted by the Court of Civil Judge, S.D., Sangli, has been vacated in Misc.Civil Appeal No.102/1997 and 103/1997, on the file of this Court. Original Plaintiffs desire to challenge the order in revision before the Hon'ble High Court.
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> As it may take time to provide certified copy of the Judgment passed in appeal to the parties, hence, after hearing both the Counsels, i.e. for the appellants and Respondents - Plaintiffs, the parties are directed to maintain statusquo and not to change the factual situation as it existed on the date of filing of the suit and appeal before this Court for a period of 15 days from today.
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> The Advocates are requested to inform the clients accordingly."

9. The said order was passed after hearing the Advocates appearing for the Appellants as is reflected from the said order. The case made out by the Respondent Nos.1 and 2 in their application under Order 39 Rule 2(A) of the said Code is that the house on the suit property was demolished by the Appellants and their Associates with the help of the Police.

10. While hearing the said application, the learned Joint District Judge allowed parties evidence and Court Commissioner was appointed. The learned Joint District Judge held that the order dated 27th November 1997 was passed after the hearing Advocates appearing for the Parties and the Advocates were specifically requested to inform their clients accordingly. The Appellate Court held that the Appellants cannot plead ignorance about the order dated 27th November 1997. The Appellat Court has referred to the evidence led by the parties. The Appellate Court also relied upon the report of the Commissioner appointed by it. The learned Judge recorded a finding that the report of the Commissioner shows that the Suit structure belonging to the Respondent Nos.1 and 2 was earlier in existance on the suit property. The learned Judge accepted the oral evidence of the witnesses of the Respondent Nos.1 and 2 regarding demolition of the suit structure on 10th December 1997. The learned Judge noted that the Appellants did not enter the witness box to deny that structure was demolished on 10th December 1997. Considering the evidence of the Respondent Nos.1 and 2 and the report of the Court Commissioner, the learned Judge recorded a finding that the structure was

demolished on 10th December 1997 within a period of 15 days from 27th November 1997. The learned Judge accepted the evidence of the Respondent Nos.1 and 2, in view of the fact that the Appellants did not enter the witness box. The learned Judge also accepted the case made out by the Respondent Nos.1 and 2 that they had informed the Police about the order dated 27th November 1997 passed by the Court. The learned Judge therefore held that the Appellants have demolished the structure in gross breach of order dated 27th November 1997 and there was a willful dis-obedience on the part of the Appellants.

11. When the Respondent Nos.1 and 2 led evidence regarding demolition on 10th December 1997 and when the report of the Court Commissioner showed that the suit structure existed on the date of institution of the suits, the Appellants did not lead any evidence to show that they were not aware of the order passed by the Court or that they had some material to show that breach on their part was not deliberate or wilful. They should have lead evidence to that effect if the demolition had done by the Police. Once demolition of the structure by the Appellants with the help of others is established,

considering the fact that the Appellants had full knowledge of the order dated 27th November 1997 even on 10th December 1997 when action of demolition was carried out, no fault can be found with the finding of the Appellate Court that there was a disobedience of the order on the part of the Appellants.

12. Shri Dharmadhikari, learned Counsel appearing for the Appellants submitted that the order dated 27th November 1997 can not be an order under Order 39 Rule 1 and 2 and therefore, Rule 2(A) of Order 39 will not apply to the facts of the case. It is, therefore, necessary to refer to provision of Rule 2(A).

> " Rule 2(A):- Consequence of disobedience or breach of injunction - (1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months unless in the meantime the Court directs his release.

> (2) No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."

13. It is to be noted here that the Trial Court had granted temporary injunction in favour of Respondent Nos.1 and 2 in respect of the suit property and suit house. While deciding the Appeal preferred against the order of temporary injunction, the learned Joint District Judge had set aside the orders granting temporary injunction. However, with a view to enable the Respondents to approach the higher Court, he passed an order directing the parties to maintain status-quo for a period of 15 days. An Appeal before the Appellate Court was continuation of the original proceedings under Order 39 Rule 1 and 2. In such appeal,which was a continuation of suit and application for temporary injunction filed therein, the Appellate Court granted temporary injunction in favour of Respondent Nos.1 and 2 for a limited period. It is, therefore, obvious that the order dated 27th November 1997 is nothing but an order passed under Order 39 Rule 1 and 2 of the said

Code. It will be necessary to note here that provisions of Order 39 Rule 1 and 2 of the said Code were applicable to the Appeals preferred by the Appellants herein. In this view of the matter, it is clear that Rule 2(A) Order 39 is applicable to the facts of the case. Considering the object of Rule 2(A) of Order 39, such narrow interpretation as suggested by Shri Dharmadhikari cannot be put to the language used in Rule 2(A). Rule 2(A) is enacted to be ensure that there is no dis-obedience of order of interim injuction under Order 39 Rule 1 and 2 of the said Code. Therefore, the submission of Shri Dharmadhikari regarding applicability of Rule 2(A) of Order 39 deserves to be rejected.

14. I am therefore of the view that the finding recorded by the Appellate Court regarding wilful dis-obedience by the Appellants of the Order datd 27th November 1997 deserves to be upheld.

15. Shri Dharmadhikari submitted that the structure was errected on a Government land by Respondent Nos.1 and 2. He pointed out that the Appellants succeeded in pending Appeals on merits and therefore, such harsh and disproportionate punishment was not called for. Shri

More, Advocate for Respondent Nos.1 and 2 submitted that the farm house of Respondent Nos.1 and 2 was high handedly demolished by the Appellants with the help of Police though the Police were having knowledge of the order dated 27th November 1997. He, therefore, submitted that the Appellate Court was right and justified in directing the detention of Civil Prison for two months. Shri More submitted that the cost of structure demolished was more than Rs.1,00,000/-. However, Shri Dharmadhikari, Advocate for the Appellants submitted that the cost cannot be more than Rs.10,000 to 20,000/- of the structure which was a temporary structure.

16. The Appellants succeeded in the Appeal preferred by them before the Appellate Court and the order of temporary injunction passed against them by the Trial Court was set aside. It is to be noted here that the order of status quo was passed after the Appeals were disposed of to enable the Respondent Nos.1 and 2 to approach the Higher Court. In normal course, the Appellants will have to restore status-quo ante. However, such direction cannot be given in this case as there is a serious dispute regarding title of the

Respondent Nos.1 and 2 in respect of the suit property and it is claimed that the suit property is vesting in the Government. There is the some dispute regarding the legality and validity of the suit structure. Therefore, in the facts of the case, direction to restore the status-quo ante cannot be issued. Considering all the the facts and circumstances, the Appellants cannot be immediately directed to undergo civil imprisonment. There is a serious dispute between the parties as regards cost of the suit structure. Considering the nature and the description of the suit structure on record, if the Appellants pay reasonable amount to Respondent Nos.1 and 2, they need not undergo detention and civil imprisonment. Considering the facts and circumstances of the case, the Appellants will have to pay a sum of Rs.15,000/- each to the Respondent Nos.1 and 2 within a period of 12 weeks from today. If they fail to deposit the amount, they will have to be penalized by directing them to undergo civil imprisonment in Civil prison for a period of one month. The period of two months fixed by the Appellate Court will have to be reduced considering the facts and circumstances of the case.

17. Hence I pass the following order :-

(i) Appeal is partly allowed.

(ii) Findings recorded by the Appellate Court are confirmed.

(iii) The period of detention in Civil prison of the Appellants is reduced to one month.

(iv) If the Appellants deposit a total of sum of Rs.30,000/- in the Appellate Court within a period of 12 weeks from today, the order directing the Appellants to be detained in Civil imprisonment will not implemented. However, if the Appellants fail to deposit the total sum of Rs.30,000/- within a period of 12 weeks from today, the order of directing the detention of the Appellants in Civil prison for one month will immediately become operative.

(v) In case the sum of Rs.30,000/- is deposted in the Appellate Court, the Respondent Nos.1 and 2 will be permitted to withdraw a sum of Rs.15,000/- each.

(vi) The Appellants will pay costs of Rs.2,500/- each to the Respondent Nos.1 and 2 of this Appeal within a period of 12 weeks from today.

(vii) Parties and the concerned Court to act on authenticated copy of the order.

(A.S. Oka, J.)